



## FAS POLICY AND PROCEDURE (PAP) 2018-02

### MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES

FROM: MARK J. LEE  
ASSISTANT COMMISSIONER  
OFFICE OF POLICY & COMPLIANCE (QV)

SUBJECT: SMALL BUSINESS SUBCONTRACTING UNDER THE  
FEDERAL SUPPLY SCHEDULES (FSS) PROGRAM

1. Purpose: The purpose of this policy is to provide the acquisition workforce with an overview of the policies and procedures governing small business subcontracting under the FSS Program.
2. Background: GSA strongly supports the participation of small-business concerns in the GSA Schedules program. It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, Veteran Owned Small Business, Service Disabled Veteran Owned Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women Owned Small Business concerns. Subcontracting plans are required from other than small business (OTSB) contractors who are awarded federal contracts or subcontracts for goods and services expected to exceed the threshold established by FAR 19.702(a)(1). To achieve increased small business utilization under the FSS program, Contracting Officers (COs) must ensure that the requirement for small business subcontracting plans is being implemented correctly and consistently in FSS contracts before and after award.
3. Effective Date: Date of signature.
4. Expiration Date: This policy will remain in effect until cancelled or incorporated into a handbook.
5. Applicability: This policy applies to all GSA/FAS and VA contracting activities awarding and administering FSS contracts.
6. Cancellation: This PAP will cancel IL 2011-09 and IL 2011-09 Supplement No.1, PIN 2008-01, PIB 03-6 and AL 03-3.
7. References: This PAP references the following policy and regulations: 13 CFR 121.402, 13 CFR 125.3, FAR 19.201, 19.301, 19.7, GSAM 519.705.
8. Instructions/Procedures:

#### A. Determining the Need for a Subcontracting Plan

Subcontracting plans are required from all OTSB contractors (including non-profit, Ability One and UNICOR contractors) who are awarded federal contracts or subcontracts for goods and services expected to exceed the subcontracting plan threshold established in FAR 19.702(a)(1). COs shall consider all offers received from OTSB concerns to have an estimated contract value at or exceeding the threshold, including option years, whether exercised or not, as specified in GSAM 519.705-2 (a).

(b) (5)

## B. Subcontracting Plan Requirements

The required elements of a subcontracting plan are found in FAR 19.704 and FAR Clause 52.219-9, Small Business Subcontracting Plan. In accordance with GSAM, 519.705-4, COs should provide offerors a [model subcontracting plan](#) and include the following notice:

“GSA provides this model plan as a tool. The contracting officer must adapt this model plan to fit the subcontracting situation. The plan is NOT a fill-in-the-blank form and the contracting officer must remove instructional language. This model does not establish minimum requirements for an acceptable plan. The model reflects objectives GSA encourages contractors to adopt. GSA expects offerors to thoroughly review the requirements set forth in FAR 19.704, Subcontracting Plan Requirements and FAR Clause 52.219-9, Small Business Subcontracting Plan before submitting their subcontracting plans.”

## C. Types of Subcontracting Plans

Under the FSS program, offerors may submit either Individual or Commercial subcontracting plans, the basic requirements of which are provided below:

Individual Plan	Commercial Plan
Applies to the specific contract.	Applies to the entire production of commercial items sold by either the entire company or a portion thereof.
Covers the entire contract period (including options), assuming there is no rerepresentation of size status during the contract term (see below for further discussion on rerepresentation).	Covers the contractor's fiscal year.
Goals based on planned subcontracting in support of the specific contract and can be modified prior to each option.	Goals submitted and negotiated annually.
Requires Individual Subcontracting Reports (ISR) and Summary Subcontracting Reports (SSR) submission to eSRS (two ISRs and one SSR are required by FAR 52.219-9 each year as well as a final ISR upon completion of the contract).	Requires SSR submission in eSRS (only one annual SSR report is required); no ISR required.

#### **D. Review, Approval and Distribution of Subcontracting Plans**

**1) Pre-Award:** COs shall review individual subcontracting plans submitted by OTSB offerors and obtain advice and recommendation from the Small Business Technical Advisor (SBTA) and Procurement Center Representative (PCR), prior to awarding the contract (See FAR 19.705-4). The CO shall consider each plan in terms of the circumstances of the particular acquisition, including:

- (1) Previous involvement of small business concerns as prime contractors or subcontractors in similar acquisitions;
- (2) Proven methods of involving small business concerns as subcontractors in similar acquisitions; and
- (3) The relative success of methods the contractor intends to use to meet the goals and requirements of the plan, as evidenced by records maintained by contractors.

After reviewing the plan, COs should consider their negotiation strategy and negotiate subcontracting plans in accordance with FAR 19.705-4. COs should establish subcontracting goals that can reasonably result from the offeror expending good faith efforts to utilize small businesses, and that are not unreasonably low (See FAR 19.705-4 (c)).

Additionally, COs should address the following requirements prior to award:

- Address the contractor's past performance, including their subcontracting performance, as part of the responsibility determination.
  - The subcontracting plan must be incorporated as a material part of the contract.
  - Federal Procurement Data System (FPDS) reporting populates information in eSRS. If FPDS is inaccurate:
    - the contractor will be unable to submit reports in eSRS;
    - the CO will be unable to review reports in eSRS; and
    - GSA's Annual Scorecard in Small Business will be negatively impacted.
- 2) Upon Award:** In addition to responsibilities described in FAR 19.705-6, in accordance with GSAM 519.705-6, the contracting officer must give the SBA Area Director a copy of the notice of award and the successful offeror's subcontracting plan within five workdays of contract award or contract modification, when applicable.

SBA Area Directors can be found via the following link:

<https://www.sba.gov/contracting/resources-small-businesses/pcr-directory/area-directors>. Note that the SBA Area Director is not the SBA PCR who reviewed the subcontracting plan.

## **E. Post Award Administration of the Subcontracting Plan**

**1) Subcontract Administration Duties:** The CO shall perform the following subcontracting administration duties (See FAR 19.705-6):

- Monitor the prime contractor's compliance with its subcontracting plan, to include the following:
  - Ensure that subcontracting reports are submitted into the eSRS within 30 days after the report ending date.
  - Review ISRs, and where applicable, SSRs, in eSRS within 60 days of the report ending date
- Either acknowledge receipt of or reject the reports in accordance with FAR subpart 19.7, 52.219-9, Small Business. Subcontracting Plan, and the eSRS instructions ([www.esrs.gov](http://www.esrs.gov)).
- If rejected, ensure contractors submit revised reports within 30 days of a CO's rejection.
- Evaluate the prime contractor's compliance with its subcontracting plan, to include the following:
  - Assess whether the prime contractor made a good faith effort to comply with its small business subcontracting plan (See 13 CFR 125.3(d)(3)).
  - Assess the prime contractor's written explanation concerning the prime contractor's failure to use a small business concern in the performance of the contract in the same scope, amount, and quality used in preparing and submitting the bid or proposal, if applicable.
  - Initiate action to assess liquidated damages in accordance with 19.705-7 upon a recommendation by the administrative CO or receipt of other reliable evidence to indicate that such action is warranted.
  - Take action to enforce the terms of the contract upon receipt of a notice under 19.706(f) (the contractor is failing to comply in good faith with the subcontracting plan).
  - Acknowledge receipt of or reject the ISR and the SSR in the eSRS.

**2) eSRS Report Dashboard:** Utilize the "Not in Acceptance Status" tab of the [eSRS Reporting Dashboard](#) to identify SSRs that require the above mentioned actions. The dashboard highlights the following:

- The required SSRs for a specific Fiscal Year, and tracks the number, percentage, dollar value, and socioeconomic impact of SSR submissions by status (Accepted, Pending, Rejected, Revised, Reopened).
- Whether the Contractor has submitted a report in eSRS.
- The potential responsible Portfolio, Acquisition Center, Schedule, Buyer, and ACO for the SSRs that are not in accepted status.

## **F. Representation of Business Size**

Offerors shall certify their business size/socio-economic status prior to award via the System for Award Management (SAM) Representations and Certifications. Unless another offeror or interested party challenges the representation, or the CO has reason

to challenge the representation, the CO shall accept the offeror's certification that it is a small business.

Under FSS, small business representations are made at the Schedule contract level and ordering activities should rely on the representations made by Schedule contractors. Representation shall be made in accordance with the size standard in effect at the time of representation (or rerepresentation) that corresponds to the North American Industry Classification System (NAICS) code assigned to the contract. Where multiple NAICS codes are assigned to a contract, offerors must identify the NAICS code under which a preponderance of work will be performed for purposes of contract award; however, they must meet the applicable size standard for each NAICS code for which they seek an award as a small business concern. (See 13 CFR 121.402 (c)(1)(ii)).

**1) Rerepresentation from small to OTSB (See FAR 19.301-2):** A contractor rerepresenting from a small to OTSB, must rerepresent under the following three conditions:

- within 30 days of a novation agreement
- within 30 days after a merger or acquisition
- within 60-120 days prior to the exercise of an option

Effective November 1, 2016, the FAR was amended to provide COs with the discretion to require subcontracting plans for contracts containing 52.219-9, Small Business Subcontracting Plan, if a prime contractor's size status changes from small to other than small as a result of a size representation. Accordingly, FSS COs shall require subcontracting plans if a contractor rerepresents from a small to OTSB. When this occurs, the CO shall:

- Require that the contractor submit a subcontracting plan, prior to approving the rerepresentation modification.
- Review and obtain approval for the subcontracting plan, according to the requirements discussed above.
- When greater than 210 days prior to Option, incorporate the approved plan into the FSS contract (via an incorporate sub-k plan modification) immediately, or, when 210 days or less prior to Option, incorporate the negotiated plan as a material part of the contract effective at the start of the Option period.

**2) Rerepresentation from OTSB to small (See FAR 19.301-3):** A contractor rerepresenting from an OTSB to small business may rerepresent under the following conditions:

- within 30 days of a novation agreement
- within 30 days after a merger or acquisition
- within 60-120 days prior to the exercise of an option, and
- when contractor qualifies as a small business concern under the applicable size standard in effect at the time of its rerepresentation.

When this occurs, the CO shall:

- Complete a rerepresentation modification; and

- Remove the plan from the contract, effective at the start of the option period, or, when the rerepresentation is greater than 210 days prior to option, remove the plan from the contract, effective immediately.

#### **G. Subcontracting Requirements at Time of Option**

Prior to exercising an option, the CO must ensure that the contractor's SAM registration is current and accurate. Contractors must recertify their business size and, if a change in size status has occurred, a rerepresentation modification must be submitted by the contractor and approved by the CO before the option is exercised. As noted above in Section E, if a change in size status occurs within 210 days of the option, the rerepresentation will be effective at the start of the option period.

COs must ensure that the contractor's approved subcontracting plan has not expired and will remain effective into the option period, or, that a plan has been submitted and approved, if applicable. Additionally, COs shall review the contractor's performance under the subcontracting plan and ensure that all eSRS reports have been filed, as required. COs must also ensure that FPDS reflects the updated business size if a change in business size occurs.

COs are encouraged to visit the GSA OSBU Subcontracting page on InSite for additional information: <https://insite.gsa.gov/subcontracting>

#### 9. Signature:

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Date

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